

Remarks/Arguments

The preceding amendments and following remarks are submitted in response to the Official Action of the Examiner mailed September 17, 2003, setting a three-month shortened statutory period for response ending December 17, 2003. Claims 1-20 remain pending.

Reconsideration, examination and allowance of all pending claims are respectfully requested.

As a preliminary matter, Applicant submitted a supplemental IDSs on August 15, 2003. Applicant respectfully requests that the Examiner consider these references, and provide an initialed copy of the FORM-1449s filed therewith in due course.

In paragraph 2 of the Office Action, the Examiner objected to the drawings under 37 C.F.R. § 1.83(a) because the drawings must show every feature of the invention specified in the claims. The Examiner states that claim 1 recites “nubs being separate from the two terminating ends”, but Figures 38 and 39 show the nubs (764a and 764b) at the terminating ends of the supporting legs (748 and 750), and not separate as claimed.

After carefully reviewing the drawings, Applicant must respectfully disagree. Below is a reproduction of Figure 38 of the present specification, with some annotations added.

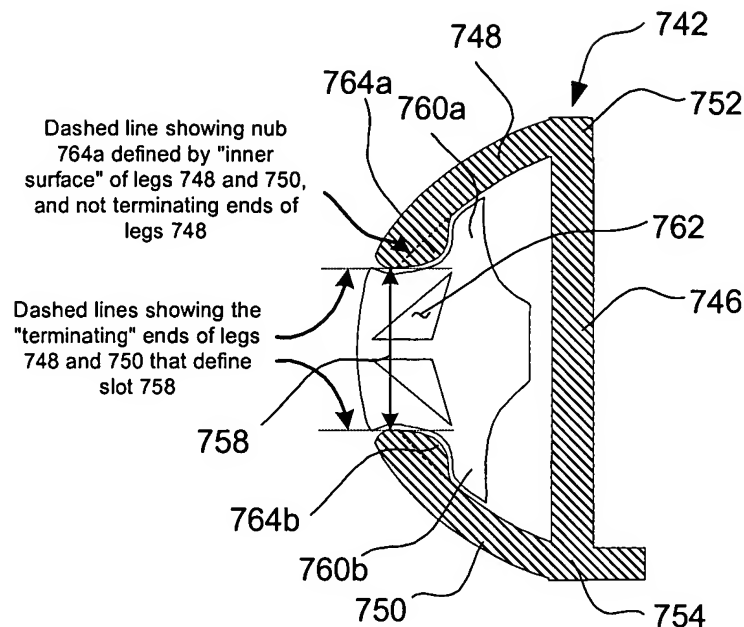


FIG. 38

Dashed lines have been added, showing how the legs 748 and 750 would look if the nubs 764a and 764b were not present. As can be seen, the legs 748 and 750 extend to terminating ends, where the terminating ends defining slot 758.

Dashed horizontal lines have been placed tangentially to the terminating ends of leg 748 and 750. Merriam-Webster's Dictionary defines the word "terminate" as "to serve as an ending, limit, or boundary of". As can be seen, nubs 764a and 764b are separate from the "terminating" ends of legs 748 and 750. As such, the nubs 764a and 764b are not at the "terminating" ends of the supporting legs 748 and 750, as the Examiner suggests. Instead, nubs 764a and 764b are separate from, or at least substantially separate from, the terminating ends of legs 748 and 750.

Despite the foregoing, and in the spirit of cooperating, claim 1 has been amended to recite:

1. (Currently Amended) An elongated carrier having a cavity for receiving an elongated bumper member, the elongated carrier comprising:
one or more walls, the one or more walls having inner surfaces that are adapted to define at least part of a cavity;
a slot extending into the cavity defined by two terminating ends surfaces of the one or more walls, the two terminating end surfaces separate from the inner surfaces of the one or more walls; and
a nub extending into the cavity from at least one of the one or more walls, the nub being defined by one or more of the inner surfaces of the one or more walls and not defined by or substantially defined by the terminating end surfaces separate from the two terminating ends.

As can be seen, claim 1 has been amended to recite two terminating end surfaces that are separate from the inner surfaces of the one or more walls. Claim 1 also recites that the nub is defined by one or more of the inner surfaces of the one or more walls and not defined by or substantially defined by the terminating end surfaces. As shown above, this is clearly supported by the present specification and drawings.

In paragraph 3 of the Office Action, the Examiner rejected claims 1-10 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that claim 1 is indefinite because it is not clear what the meaning of the term “separate” is in light of the specification and drawings. The Examiner states that no “separate” nubs are disclosed. As detailed above, and with respect to Figure 38, the nubs 764a and 764b are not at the “terminating” end of the supporting leg 764, as the Examiner suggests. Instead, the nubs 746a

and 746b are defined by one or more of the inner surfaces of the one or more walls, and not defined by or substantially defined by the terminating end surfaces. In view of the foregoing, claim 1 is believed to fully comply with 35 U.S.C. § 112, second paragraph.

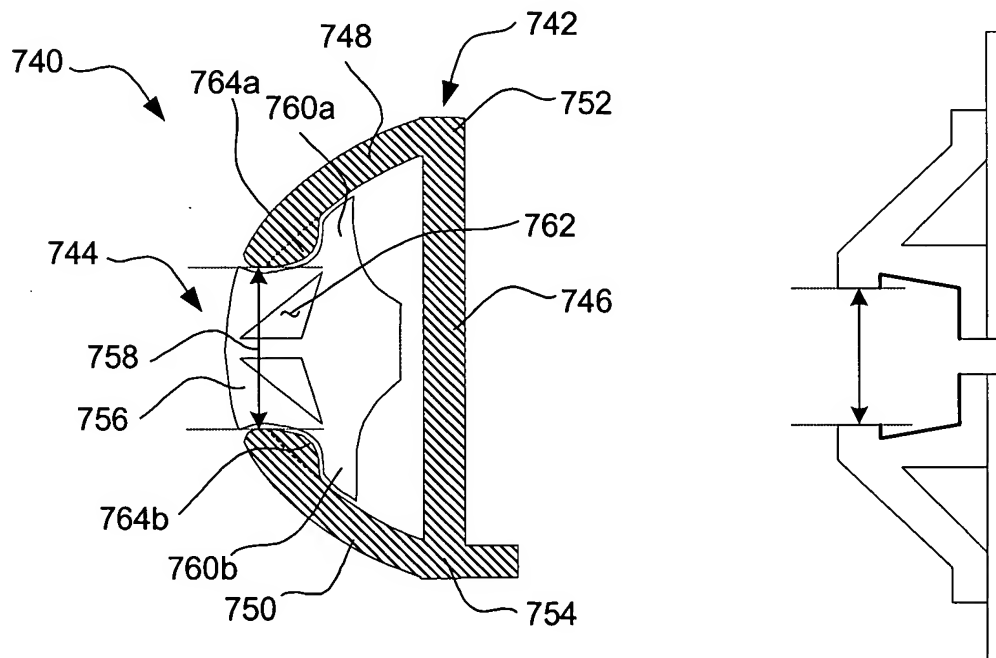
In paragraph 4 of the Office Action, the Examiner rejected claims 1, 2, 4, 6, 11-16 and 18-20 under 35 U.S.C. §102(b) as being anticipated by Newman (U.S. Patent No. 3,359,030). Although the Applicant disagrees that claims 1, 2, 4, 6, 11-16 and 18-20 are anticipated by or rendered obvious in view of Newman, Applicant has amended claim 1 to recite:

1. (Currently Amended) An elongated carrier having a cavity for receiving an elongated bumper member, the elongated carrier comprising:
 - one or more walls, the one or more walls having inner surfaces that are adapted to define at least part of a cavity;
 - a slot extending into the cavity defined by two terminating ends surfaces of the one or more walls, the two terminating end surfaces separate from the inner surfaces of the one or more walls; and
 - a nub extending into the cavity from at least one of the one or more walls, the nub being defined by one or more of the inner surfaces of the one or more walls and not defined by or substantially defined by the terminating end surfaces separate from the two terminating ends.

These amendments were made to provide further clarity to claim 1, and not necessarily to distinguish the claim from the cited prior art. In any event, claim 1 now recites that a slot extending into the cavity is defined by two terminating ends surfaces of the one or more walls, where the two terminating end surfaces are separate from the inner surfaces of the one or more walls. Claim 1 further recites a nub extending into the cavity from at least one of the one or more walls, wherein the nub is defined by one or more of the inner surfaces of the one or more walls and not defined by or substantially defined by the

terminating end surfaces.

In contrast to the foregoing, the slot of Newman is defined by two parallel extending terminating end surfaces. Thus, the “inner surfaces” of Newman, which cannot include the parallel extending terminating end surfaces, do not define a nub, and in particular, a nub that is not defined by or substantially defined by the terminating end surfaces, as recited in claim 1. To highlight the differences between Newman and claim 1, annotated Figure 38 of the present specification and a simplified annotated reproduction of Figure 4 of Newman are provided below.



As can be seen, the slot of Newman is defined by the two parallel extending terminating end

surfaces (e.g. the two parallel extending terminating end walls that lie along and parallel to the two horizontal dashed lines provided). Claim 1 recites that the two terminating end surfaces are separate from the inner surfaces of the one or more walls. Therefore, and according to claim 1, the “inner surfaces” of the one or more walls of Newman cannot correspond to the two parallel extending terminating end surfaces, but rather must correspond to, for example, the surfaces that are marked with a darker line in the above simplified reproduction of Figure 4 of Newman.

None of the “inner surfaces” of Newman define a nub, and in particular, a nub that is not defined by or substantially defined by the terminating end surfaces, as recited in claim 1. As such, claim 1 is believed to be clearly patentable over Newman. For similar and other reasons, dependent claims 2-10 are also believed to be clearly patentable over Newman.

Turning now to independent claim 11. Claim 11 has been amended to recite:

11. (Currently Amended) An elongated rub-rail, comprising:
an elongated carrier, the elongated carrier having one or more walls,
wherein the one or more walls include one or more inner surfaces that define at least part of a cavity;
a slot extending into the cavity defined by at least two terminating ends of the one or more walls, wherein each of the two terminating ends is defined by a terminating end surface separate from the one or more inner surface of the one or more walls, wherein at least one of the inner surfaces of the one or more walls defines has at least one inwardly extending nub, the nub not defined by or substantially defined by the terminating end surfaces; and
an elongated bumper member, at least part of the elongated bumper member positioned in the slot and having an outer surface that is shaped to accept the at least one nub of the elongated carrier..

As can be seen, claim 11 recites an elongated carrier having one or more walls with one or more inner surfaces that define at least part of a cavity. Claim 11 further recites a slot extending into

the cavity that is defined by at least two terminating ends of the one or more walls, wherein each of the two terminating ends is defined by a terminating end surface separate from the one or more inner surface of the one or more walls. Claim 11 further recites that at least one of the inner surfaces of the one or more walls defines at least one inwardly extending nub, wherein the nub is not defined by or substantially defined by the terminating end surfaces. As such, and for the same reasons given with respect to claim 1 above, as well as other reasons, independent claim 11 is believed to be clearly patentable over Newman. For the same and other reasons, dependent claims 12-13 are also believed to be clearly patentable over Newman.

Turning now to claim 14. Claim 14 has been amended to recite:

14. (Currently Amended) An elongated carrier having a cavity for receiving an elongated bumper member, the elongated carrier comprising:
a back member having a first end and a second end;
a first support leg extending outward from at or near the first end of the back member, the first support leg having a thickness and an inner surface;
a second support leg extending outward from at or near the second end of the back member, the second support leg having a thickness and an inner surface, the inner surface of the first support leg, the inner surface of the second support leg and the back member defining at least part of the cavity;
a terminating end of the second support leg defined by a terminating end surface separate from the inner surface of the second support leg, and a terminating end of the first support leg defined by a terminating end surface separate from the inner surface of the first support leg, the terminating end surface of the second support leg and the terminating end surface of the first support leg being spaced from one another to form a slot therebetween; and
the inner surface of the first support leg having defining an inwardly extending nub, the nub not defined by or substantially defined by the terminating end surfaces of the first and second support legs.

For similar reasons to those given above, as well as other reasons, independent claim 14 is believed to be clearly patentable over Newman. For similar and other reasons, dependent claims

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15-20 are also believed to be clearly patentable over Newman.

Finally, Applicant respectfully disagrees with the Examiner's rejections of dependent claims 3, 5, 7, 8, 9, 10, and 17 set forth in paragraphs 5, 6, and 7 of the Office Action. However, since the independent claims are believed to be clearly patentable, a response to the rejections of the dependent claims is not believed to be necessary at this time.

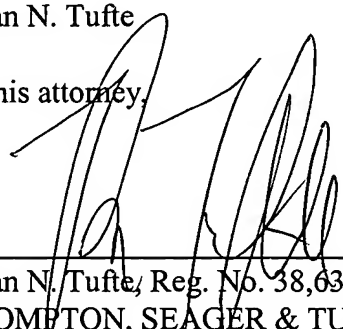
In view of the foregoing, Applicant believes that all pending claims 1-20 are in condition for allowance. Reexamination and reconsideration are respectfully requested. If the Examiner believes it would be beneficial to discuss the application or its examination in any way, please call the undersigned attorney at (612) 573-2002.

Respectfully submitted,

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By his attorney,

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